

FACTUAL HISTORY

OWCP accepted that on July 6, 2000 appellant, then a 46-year-old temporary community partnership specialist, sustained cervicalgia and cervical, thoracic and sacrum strains when she fell while working at the employing establishment.² Appellant was placed on the periodic rolls for temporary total disability compensation on December 31, 2000. OWCP required her to complete CA-1032 forms which directed her to report any earnings from employment or self-employment while in the receipt of OWCP compensation benefits.

On September 9, 2004 appellant completed a Form CA-1032 indicating that she had not worked in the past 15 months. She completed another Form CA-1032 on September 7, 2005 stating that she had not worked during the prior 15 months.

In a July 5, 2006 decision, OWCP terminated appellant's compensation benefits effective that date, finding that she no longer had any residuals or disability causally related to her July 6, 2000 employment-related injuries.

In a November 4, 2008 investigative report, the Office of the Inspector General for the employing establishment presented evidence which showed that appellant worked as a clinical pastor at Parkland Health and Hospital Systems from August 25 through September 12, 2003. Appellant was paid \$1,218.00 at an hourly rate of \$10.15. She worked as a full-time resident chaplain at Huguley Memorial Medical Center from March 31 through May 27, 2005. Appellant was paid a \$900.00 stipend every two weeks, totaling \$4,050.00. In a July 31, 2008 interview with a special agent, she acknowledged her occupation as a chaplain, but stated that she did not receive a salary in the position as she performed volunteer work. Because appellant received a stipend and considered her work volunteer, she did not report her earnings to OWCP. She defined work as someone who received a good pay check for 40 hours of work a week. Appellant did not consider her work as volunteer in the appropriate section on the CA-1032 forms she completed because she likely used a previous Form CA-1032 as an example. She did not think the forms were important.

On February 9, 2010 OWCP issued a preliminary determination of overpayment. It found that appellant received an overpayment in the amount of \$1,563.91 because she worked as a clinical pastor and resident chaplain from August 25 through September 12, 2003 and March 31 through May 27, 2005 while receiving temporary total disability compensation. OWCP noted that she received compensation in the amount of \$1,977.15 for the period August 25 to September 12, 2003 and \$5,317.44 for the period March 31 to May 27, 2005 which totaled \$7,294.59. Appellant was only entitled to \$5,730.68 in compensation for the stated periods based on a wage-earning capacity determination, creating a \$1,563.91 overpayment. OWCP found that she was at fault in the creation of the overpayment because she was aware or should have reasonably been aware that she was not entitled to wage-loss compensation for total disability while working. Appellant was afforded 30 days to request a telephone conference, precoupment hearing or a final decision based on the record. OWCP also requested financial information and any additional arguments supporting waiver of the overpayment.

² Appellant stopped work on July 11, 2000.

On February 23, 2010 appellant requested a prerecoupment hearing and waiver of the \$1,563.91 overpayment. She disagreed with the amount of the overpayment and finding of fault. Appellant contended that she donated the wage stipend she received while working at Parkland Hospital to the hospital's fund.

In a March 10, 2010 decision, OWCP finalized the overpayment determination in the amount of \$1,563.91. It found that appellant did not submit any evidence refuting the amount of the overpayment or finding of fault and directed recovery of the overpayment.

By letter dated April 8, 2010, OWCP vacated its March 10, 2010 decision as appellant had requested a prerecoupment hearing on February 23, 2010.

During a June 9, 2010 hearing, appellant testified that the earnings she donated to the Parkland Hospital fund were used to buy flowers for patients and compensate families. She expressed her inability to repay the overpayment based on her current reduced salary as an enumerator at the employing establishment. The hearing representative left the record open for 30 days so that appellant could submit financial records documenting her monthly income and expenses.

In a June 11, 2010 letter, appellant denied receiving a salary in 2003. She reiterated that the money she received was given to the Parkland Hospital trust fund. Appellant advised the director of chaplains at the hospital that her services were free. She was not certain as to whether she worked at the hospital in 2005.

In a July 9, 2010 letter, appellant advised that she had no income as she stopped working at the employing establishment as of June 2010.

In a July 29, 2010 decision, the hearing representative finalized the \$1,563.91 overpayment of compensation, finding that appellant was at fault in creating the overpayment because she failed to either report her earnings as required on CA-1032 forms or contact OWCP when she began to receive income, thereby precluding waiver of recovery of the overpayment. He noted that she did not submit any financial information as requested. Appellant was advised that interest would immediately begin to accrue on the overpayment.

LEGAL PRECEDENT -- ISSUE 1

FECA provides that the United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of her duty.³ When an overpayment has been made to an individual because of an error of fact or law, adjustment shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which the individual is entitled.⁴

³ 5 U.S.C. § 8102(a).

⁴ *Id.* at § 8129(a).

If the claimant has been receiving compensation on the periodic rolls, the claims examiner should delete the payment record from the periodic rolls as soon as possible. If the deletion can be made effective with the current roll period, any additional compensation due should be paid on the daily rolls. Any compensation paid for total wage loss subsequent to the date of return to work should be declared an overpayment.⁵

If the claimant is entitled to compensation for partial wage loss after return to work, the claims examiner should compute entitlement using the *Shadrick* formula and authorize compensation on a 28-day payment cycle. The claims examiner should make every effort to avoid interruption of income to the claimant.⁶ Earnings of a sporadic or intermittent nature which do not fairly and reasonably represent the claimant's loss in wage-earning capacity (LWEC) should be deducted from continuing compensation payments using the *Shadrick* formula (past earnings must be declared an overpayment). Sporadic or intermittent earnings should not be used as the basis for an LWEC determination but they should be used to help establish the kind of work the claimant can perform.⁷

ANALYSIS -- ISSUE 1

The record establishes that an overpayment was created as appellant was employed from August 25 through September 12, 2003 at Parkland Hospital as a clinical pastor and from March 31 through May 27, 2005 at Huguley Memorial Medical Center as a resident chaplain. Appellant remained on the periodic rolls and received wage-loss compensation for total disability. OWCP determined that she received \$7,294.59 in compensation for total disability during the stated periods. The Board finds that as appellant earnings from employment as a chaplain, she should not have received compensation for total disability. Utilizing the *Shadrick* formula,⁸ OWCP determined that she should have received \$5,730.68 based on its wage-earning capacity determination. OWCP subtracted this amount from the \$7,294.59 that appellant received for total disability and found that she received an overpayment of \$1,563.91. The Board finds that her receipt of compensation created a \$1,563.91 overpayment in compensation.

Appellant contended that she performed volunteer work at Parkland Hospital and Huguley Memorial Medical Center, noting that she donated her earnings from Parkland Hospital to its fund for patients and their families. She also informed its chaplain director of her volunteer work. As stated, the record established that appellant received income from employment for her ministerial duties at both hospitals. The fact that she donated her earnings to Parkland Hospital

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Fact of Injury*, Chapter 2.814.7(b)(1) (July 1997).

⁶ *Id.* at Chapter 2.814.7(b)(2) (December 1995). See *Albert C. Shadrick*, 5 ECAB 376 (1953).

⁷ FECA Procedure Manual, *supra* note 5 at Chapter 2.814.7(d)(3) (June 1996).

⁸ *Supra* note 6.

and informed management of her volunteer status does not render the work she performed as volunteer, nor does it obviate the creation of the overpayment.⁹

LEGAL PRECEDENT -- ISSUE 2

Section 8129(b) of FECA¹⁰ provides that “[a]djustment or recovery by the United States may not be made when incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of [FECA] or would be against equity and good conscience.” Section 10.433 of OWCP’s implementing regulations¹¹ provide that, in determining whether a claimant is at fault, OWCP will consider all pertinent circumstances. An individual is with fault in the creation of an overpayment who:

“(1) Made an incorrect statement as to a material fact which he or she knew or should have known to be incorrect; or

“(2) Failed to provide information which he or she knew or should have known to be material; or

“(3) Accepted a payment which he or she knew or should have known to be incorrect.”

Whether or not OWCP determines that an individual was at fault with respect to the creation of an overpayment depends on the circumstances surrounding the overpayment. The degree of care expected may vary with the complexity of those circumstances and the individual’s capacity to realize that he or she is being overpaid.¹²

ANALYSIS -- ISSUE 2

The Board finds that appellant was at fault in the creation of the overpayment because she failed to provide information about her employment, which she knew or should have known was material. The CA-1032 forms completed by her on September 9, 2004 and September 7, 2005 specifically advised her to report any employment activity or earnings, including self-employment, even if the business ran at a loss. Appellant was reasonably aware that her employment as a clinical pastor and resident chaplain was material information that should be furnished to OWCP. Her failure to furnish this information created the overpayment of compensation for the period August 25 through September 12, 2003 and March 31 through May 27, 2005. The Board finds that OWCP properly determined fault under the second standard for failing to provide information appellant knew to be material to her receipt of compensation

⁹ See generally, *Sharon M. Powell*, Docket No. 00-1130 (issued January 25, 2002), n.22 (where the Board found that appellant’s decision to donate her commission to her customer’s church did not negate the fact that she had earnings from her real estate activities).

¹⁰ 5 U.S.C. § 8129(b).

¹¹ 20 C.F.R. § 10.433.

¹² *Id.* at § 10.433(b).

benefits. Appellant, therefore, was at fault in the creation of the \$1,563.91 overpayment. Recovery of the overpayment is not subject to waiver.

On appeal, appellant contended that interest should not accrue on her \$1,563.91 overpayment until she has received due process. The Board notes that she received due process as OWCP provided her with a preliminary notice of the overpayment. Further, appellant was afforded a hearing on the matter prior to the issuance of OWCP's July 29, 2010 decision finalizing the overpayment. The Board notes that, with respect to the recovery of the overpayment in compensation, the Board's jurisdiction is limited to reviewing those cases where OWCP seeks recovery from continuing compensation benefits under FECA.¹³ As appellant is no longer receiving wage-loss compensation, the Board does not have jurisdiction with respect to recovery of the overpayment under the Debt Collection Act.¹⁴

CONCLUSION

The Board finds that OWCP properly found that appellant received an overpayment of \$1,563.91 from August 25 through September 12, 2003 and March 31 through May 27, 2005 after she returned to work. The Board further finds that OWCP properly found that appellant was at fault in the creation of the \$1,563.91 overpayment and, therefore, ineligible for waiver of the recovery.

¹³ *Terry A. Keister*, 56 ECAB 559 (2005); *see also Cheryl Thomas*, 55 ECAB 610 (2004).

¹⁴ *Cheryl Thomas, id.*

ORDER

IT IS HEREBY ORDERED THAT the July 29, 2010 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 23, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board